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Report Series 1992

92-15 AMO's Response to *Apartments in Houses*

Association of Municipalities of Ontario

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MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

On June 18, 1992, the Ministers of Housing and Municipal Affairs released their report, *Apartments in Houses: A Consultation Paper on Legislative Amendments to Allow One Apartment in a House*. Responses to the paper were requested by August 31, 1992.

AMO is strongly opposed to the Province's draft legislation to permit "an apartment in a house" and calls on the Province not to proceed with the introduction of legislation. The Association does not endorse the approach taken by the Province for many fundamental reasons. First and foremost AMO objects to the provincial intrusion into the authority for zoning which has been delegated to municipal councils.

AMO is especially concerned given that the Government's proposals are not in the form of options but represent the Government's policy decision. The "consultation" paper is therefore focused on how to implement the policy not on the merits and appropriateness of the policy in the first place. In opposition to this approach AMO has directed its response to questioning the fundamental basis of this policy decision.

AMO has also requested that the consultation period be extended by six months and has urged municipalities to hold public meetings on the proposals as they would for any official plan or zoning by-law amendment.

AMO's Past Position

In the past AMO has supported residential intensification as one housing policy option which should be implemented at the discretion of municipalities. AMO has recommended a housing intensification policy which requires that municipalities designate areas within their official plans where each form of residential intensification will be permitted. It is against this position that AMO has responded to the draft legislation.

AMO's Key Concerns

AMO opposes this legislation for the following fundamental reasons:

- The Province should not resort to this legislative approach for achieving its housing objectives through the land use planning system. The Sewell

Commission should continue to be the forum for recommending the appropriate means for the Province to express its goals and objectives for the land use planning system. Through its submissions to the Sewell Commission, AMO supports that the Province's role should be confined to setting goals and objectives for planning and municipalities should identify policies for implementing them.

- It is contrary to the accepted practice of policy statements as the means for expressing provincial interest and is contrary to the current requirements of the housing policy statement.

- This is an unwarranted interference with municipal zoning authority. Municipalities will be held responsible and accountable for policy decisions made by the Province which have not been subject to public consultation and appeal.

- AMO has advocated, and municipalities have begun to take on, a more active role in developing comprehensive housing policies for local communities. This proposed legislative action will both negate municipal efforts to plan for and develop housing intensification policies appropriate to their communities and will reduce the municipal authority to implement these policies.

- The legislation excludes "planning" to ensure that the necessary services are available to accommodate the residential densities permitted.

"Garden" Suites

AMO supports the proposed legislative amendments pertaining to "garden" suites subject to the following clarifications: that the terms and conditions of the agreements include restricting the occupancy of garden suites to elderly or disabled relatives of the homeowner; and that express provision be made that municipalities continue to have the authority to regulate the type of construction, size, height or bulk of these suites (i.e an enabling statement in the Planning Act allowing municipalities to apply site plan control to garden suites).

Unrelated Persons Forming a Single Housekeeping Unit

AMO is very concerned that the Province is resorting to this legislative action in response to its unsuccessful

appeal to the OMB of the City of Guelph's lodging house by-law. In many ways this action is similar to that taken by the Province with respect to Bill 128 which was also enacted in response to OMB hearings which at that time upheld municipal by-laws which made zoning distinctions based on the relationship of occupants of a residential unit. Now the Province is again reacting to a Board ruling it doesn't agree with by introducing legislation to prevent municipalities from limiting the number of unrelated occupants of a residential unit. This raises serious questions about the legitimacy of OMB hearings and decisions. AMO strongly opposes the proposed legislative amendments concerning unrelated persons and believes that the Guelph decision should prevail and that the Province should repeal Section 34a of the *Planning Act* or refer it to the Court of Appeal.

Other Amendments

In its report, *The Implementation of the Land Use Planning for Housing Policy Statement*, AMO proposed that if the Province wants to ensure greater acceptance of housing intensification, then it should look at providing municipalities with the legislative supports to enable them to ensure that the housing provided is safe, properly operated and maintained; and that the necessary services to support these units are available or can be provided and financed. In its response, AMO reiterates its recommendations on financial, regulatory and enforcement issues related to housing intensification.

One recommendation that has been responded to in the draft legislation is that of right of entry. AMO supports the proposed amendment to sections 31 and 49 of the *Planning Act* to allow the issuance of search warrants, without requiring that evidence be seized, or even specified.

1 INTRODUCTION

On June 18, 1992, the Ministers of Housing and Municipal Affairs released their report, *Apartments in Houses: A Consultation Paper on Legislative Amendments to Allow One Apartment in a House*. Responses to the paper were requested by August 31, 1992.

AMO is strongly opposed to the Province's draft legislation to permit "an apartment in a house." The Association does not endorse the approach taken by the Province for many fundamental reasons. First and foremost AMO objects to the provincial intrusion into the authority for zoning which has been delegated to municipal councils.

AMO is especially concerned given that the Government's proposals are not in the form of options but represent the Government's policy decision. The "consultation" paper is therefore focused on how to implement the policy not on the merits and appropriateness of the policy in the first place.

In opposition to this approach AMO has directed its response to questioning the fundamental basis of this policy decision.

The Province also appears to be avoiding public discussion of this issue. The paper has been released during the summer months, a two month period for the submission of responses has been established and no public consultation on the paper has been organized. It is clear the Province does not intend to consult widely on the issues.

In response, AMO has requested that the consultation period be extended by six months and has urged municipalities to hold public meetings on the proposals as they would for any official plan or zoning by-law amendment.

Key Elements of the Draft Legislation

The paper proposes draft legislation for amending the *Planning Act* and *Municipal Act* to achieve the following five objectives:

- Allow people to have one apartment in their house without getting special permission from the

municipality; an apartment in a house would be a "permitted use" which would be allowed on an "as-of-right" basis.

Amendments to the *Planning Act* are proposed to restrict municipalities from prohibiting an apartment in a house and to provide a provision of no effect for plans and by-laws passed which contravene this restriction. This restriction would apply to official plan policies, property standards by-laws, zoning, site plan control and interim control by-laws.

- Allow for regulations which describe zoning or property standards that can apply to apartments in houses.

  The legislation proposes regulations to be issued under the *Planning Act* to set limits for standards which might be applied by municipalities and prohibiting the setting of other standards.

- Improve the ability of municipal officials to obtain a search warrant to investigate problems with zoning or property standards.

  Amendments to the *Planning Act* are proposed to allow municipalities to obtain search warrants without the condition requiring that there must be evidence to be seized. This will give municipal officials enhanced ability to investigate possible violations of zoning and property standards by-laws.

- Strengthen the rules which limit the authority of municipalities to make distinctions based on the relationship among people who share a home.

  Currently, the *Planning Act* prohibits municipalities from distinguishing between related and unrelated persons. However, the Province believes that municipalities have continued to attempt to regulate groups of unrelated persons by classifying their homes as "rooming houses".

  An amendment to the *Planning Act* is proposed to make it clearer that zoning distinctions based on the relationship between people who form a "single housekeeping unit" are not permitted. In

this way, groups of unrelated people who form a "single housekeeping unit" would be treated like any other household for zoning purposes.

- Help municipalities accommodate the creation of garden suites.

  Amendments to the *Planning Act* and *Municipal Act* are proposed to permit municipalities the authority to pass a by-law to permit the placement of a garden suite for up to 10 years and to permit municipalities to enter into an agreement with proponents setting out terms and conditions related to issues such as installation, maintenance or removal, and the period of occupancy of a garden suite.

AMO's Past Position

In the past AMO has supported residential intensification as one housing policy option which should be implemented at the discretion of municipalities. AMO has recommended a housing intensification policy which requires that municipalities designate areas within their official plans where each form of residential intensification will be permitted. These uses should be permitted in areas which meet the stated provincial criteria (in the housing policy statement) and locally determined criteria for as-of-right conversions.

It is against this position that AMO has responded to the draft legislation.

1.1 Objectives of Draft Legislation

Province's Reasons for Legislating Apartments in Houses

The consultation paper states that apartments in houses are supported by the Government because they:

- are a source of affordable housing for people who need it, and at no or little cost to the taxpayer;
- can ease the financial burden of home ownership by providing an additional source of income;
- mean jobs for people in the renovation and building supply business;
- are environmentally friendly because they use existing housing better and support public services and systems, such as transit, instead of contributing to urban sprawl; and

- support neighbourhood diversity and smaller scale development in keeping with the scale and character of existing communities.

Question Objectives

These reasons are in fact objectives which different forms of housing intensification such as apartments in houses can contribute towards achieving: provision of affordable housing; financial supports to home owners; job creation; better use of existing infrastructure and limiting urban sprawl; and support of neighbourhood diversity. AMO believes these objectives should be questioned from two perspectives: are these in and of themselves supportable provincial objectives, and is the specific legislative approach the appropriate way of achieving the objectives.

The objective of providing affordable housing continues to be a government priority. While the availability of affordable housing in many communities has improved during the past few years, the need for affordable housing certainly remains in some communities. However, as noted in the housing policy statement, the most critical need exists in the major urban centres of the province with less pressure experienced in some small or rural municipalities. In recognition of this, the housing policy statement placed a higher priority on those municipalities facing the greatest growth pressures and consequently housing needs. The draft legislation alternatively has imposed a "blanket" policy which will cover all municipalities to address a "need" for affordable housing which is by no means equally felt across all communities. As a result, many municipalities outside of the major urban centres of the province see this as a policy initiative created in response to a "Toronto" problem and not one which is sensitive to or reflects the situation in their communities. AMO therefore believes this policy is an inappropriate means for achieving the objective of "affordable" housing.

The same question can and should be posed for the objective of providing a means of financial support to home owners. Again, while supportable, is this the appropriate way for the Province to achieve this objective?

The objective of job creation in the renovation and building supply business is certainly supportable.

However, given both the limitations on capital improvements imposed by rent control legislation and the lack of any provincial budgetary funds allocated to housing renovation programs (e.g. OHRP, convert-to-rent), AMO questions whether homeowners will be able to pay the required costs of renovating units to bring them up to standards.

The objective to achieve better use of existing infrastructure and limiting urban sprawl is a planning objective which has been gaining increasing support at both levels of government. However, there are many policies for achieving these objectives. AMO believes that the specific policies appropriate for achieving these objectives should be determined locally.

Similarly, the objective to "support neighbourhood diversity" is clearly a matter of local policy and neighbourhood design.

Legislating Means of Achieving Provincial Objectives

The above discussion of the reasons or objectives for permitting "an apartment in a house" reveals a fundamental question: is this legislative approach the appropriate means for the Province to achieve its own planning and housing objectives? AMO believes the Province's approach is inappropriate. The Association outlines its reasons below.

2 FUNDAMENTAL CONCERNS

2.1 Expression of Provincial Policies

Implications for Commission on Planning and Development Reform in Ontario (Sewell Commission)

The Sewell Commission is currently reviewing the land use planning system towards making recommendations for reform. One of the key elements of this review is to clearly define provincial and municipal roles in setting planning goals and policies. AMO's position has been that the Commission should develop a statement of provincial goals to reflect the following definition of provincial and municipal roles in planning policy: the Province should set goals and objectives for planning and municipalities should identify policies for implementing these. While the proposals of the Commission are still the subject of review and debate, there is agreement between AMO and the Commission

that the Province should express its planning policies through formal statements on provincial goals.

This proposed legislation works counter to both the current thinking of the Commission and AMO's position on planning reform. If the Commission is able to complete its mandate, Ontario will have a set of provincial planning goals which have been subject to consultation and hopefully agreed upon, and will be given a legal expression which is consistent for all provincial goals. From AMO's perspective, the legislative amendment is a specific policy for achieving broader provincial planning goals which should first be subject to debate and agreement and should have a consistent form of legal expression.

Housing Policy Statement

Even if the Sewell Commission was not in place, AMO would question this action in terms of current accepted practice. Since the passing of the *Planning Act 1983*, provincial policy statements issued under section 3 of the *Act* have become the accepted means for expressing provincial planning goals and policies. Certainly, policy statements have not been entirely successful, or in some cases, fully supported. In its first submission to the Sewell Commission, AMO discussed some of the problems with policy statements such as their inflexibility for addressing local variations and approaches towards meeting overall planning goals and objectives. However, the Association argued that problems could be addressed partly through the articulation of broad policy statements at the provincial level permitting adaptation and implementation by municipal governments at the local level.

This proposed legislation is a marked departure from this accepted practice. AMO and municipalities take major exception to the statement in the consultation paper that "so far, few municipalities have implemented the provisions for apartments in houses that are in the Housing Policy Statement. Since apartments in houses have many advantages, the time has come to take further action."

Under the requirements of the housing policy statement many of the 104 "priority" municipalities which were required to implement the statement by August, 1991, have conducted comprehensive official plan reviews and housing intensification studies. In fact,

AMO's survey of the 104 priority municipalities conducted in the August 1991 revealed that many municipalities were in the process of or had completed housing intensification studies, public meetings or municipal housing statements to implement the provisions of the housing policy statement.

Secondly, this legislation would apply to all 832 municipalities, 728 of which were not required to implement the policy statement by the August 1991 deadline.

AMO would also argue that this legislative action is contrary to the housing policy statement. Section 5.1.a sets out three criteria that have to be met before permitting forms of housing intensification. The section requires that areas be designated within official plans where each form of Residential Intensification will be permitted. These uses are to be permitted in areas which meet the following criteria:

- the physical potential of the existing building stock or previously developed sites can accommodate the identified forms of Residential Intensification;
- the existing services can support new households in the affected area; and,
- the potential demand for these forms of accommodation, based on the housing needs of the composition of households in the broader community, in relation to the typical characteristics of units which could be produced through the various forms of Residential Intensification, can be demonstrated.

The policy statement therefore recognizes that intensification is not possible or appropriate in all residential areas. In its report, *The Implementation of the Land Use Planning for Housing Policy Statement*, AMO argued that the criteria should include local criteria such as the compatibility of a proposal with the existing character of a neighbourhood in order to address concerns about the impacts of housing intensification on existing neighbourhoods. AMO further argued that the criteria for change should be determined through a local consultative process and not be centrally established and applied uniformly across all communities.

This legislative action is a radical step away on both fronts, that is, contrary to the accepted practice of policy statements as the means for expressing provincial interests in the planning process, and contrary to the current requirements of the land use planning for housing policy statement.

2.2 Municipal Zoning Authority

The draft legislation would have the effect of rewriting municipal official plan policies and rezoning residential areas across the province. Under the *Planning Act*, municipalities are given the authority to enact zoning regulations through by-laws adopted in accordance with the procedures set out in section 34 of the *Act*. The proposed legislation overrides the zoning authority which has been delegated to municipalities. This scale of interference with municipal zoning authority is unprecedented.

The role of the Province in regulating zoning standards through legislation must be questioned. The proposed regulations severely erode the municipal authority by setting standards for parking, external changes, size, amenity areas etc. AMO believes local municipalities should maintain the responsibility for setting zoning, development control, and property standards within an overall policy framework established by the Province. As argued in the previous section, the Province's role should be limited to that of expressing its objectives in policy statements; any changes to this should be debated and discussed within the overall review of the planning system being conducted by the Sewell Commission.

AMO further questions this action on the basis of government responsibility and accountability. Municipal councils have delegated responsibility and accountability for zoning. Their constituents understand this and expect councillors to account for planning and zoning decisions which affect them and their neighbourhoods.

This legislative intrusion has an uncomfortable resemblance to that of mandated provincial programs where ministries make program and policy decisions which municipalities must implement and finance. In this case, the Province is legislating the rezoning of

neighbourhoods, an action which will be implemented locally through required amendments to zoning by-laws and official plans. Municipalities will be held responsible and accountable for these changes yet have not had input and in most cases did not support the policy change in the first place.

It goes without saying that complaints and concerns about the introduction of changes such as new permitted housing forms into neighbourhoods are directed to municipal staff and politicians. With respect to accessory apartments most municipalities already have enough experience to know what this will mean. For illustration, complaints data for City of Brampton for a one month period in 1992 revealed that of 161 complaints, 61% were related to accessory apartments and 25% of the total were specifically about the existence of an accessory unit.[1]

Under the *Planning Act* municipalities are required to conduct public meetings on official plan and zoning by-law amendments. Site specific applications dealt with at committees of adjustment are also open to public input. This legislation will effectively override approved zoning by-laws without public consultation and without appeal. The Province will also not be consulting the public on this legislative change.

AMO argued in its report *The Implementation of the Land Use Planning for Housing Policy Statement* that as-of-right zoning virtually removes any possibility of locally determined criteria for community change. Just as neighbourhoods have developed with varying local criteria within a broad planning framework, so should neighbourhoods be able to change in the same manner. To date, the Provincial Government has focused on centrally mandated criteria for change rather than establishing a planning framework and consultative process for determining the criteria for community change at the local level.

2.3 Municipal Authority to Establish Local Housing Policies and Priorities

As stated previously, most of the 104 "priority" municipalities required to implement the housing policy statement by August 1991 have conducted housing and planning studies and developed official plan policies and

amendments to put in place comprehensive housing policies to address the objectives of the policy statement. Many municipalities have been working conscientiously to implement the statement including conducting their own surveys of demand for accessory apartments. In some areas, municipalities are in the midst of developing their housing intensification policies. While AMO has many documented concerns with this policy statement, the Association does support that the development of local housing policies and strategies should be a municipal responsibility.

AMO has also supported a greater municipal role in planning for housing. In response to the *A Housing Framework for Ontario* the Association supported greater local decision-making in the development and management of housing and basing government spending on an overall housing strategy for communities, not on a program-by-program basis. AMO also argued that the Provincial Government should recognize the expertise of municipal governments and provide incentives for more involvement in different housing programs. Examples of incentives include giving greater flexibility and autonomy in the administration of housing programs by delegating program delivery responsibility (for all housing programs and including allocations) to upper tier municipalities where requested.

As a further follow-up to the housing framework consultation, AMO has continued to support greater municipal leadership and discretion in the local application of provincial housing policies and programs. Recently, AMO communicated to the Province the Association's support in principle for the Ministry of Housing's proposal for a "municipal menu" of existing housing stock programs. The menu would combine rehabilitation and intensification housing programs into a single funding package; municipalities, if they chose to deliver, would be allocated a block fund which they would distribute amongst the selection of programs most suited to their needs and geographic location. AMO believes that this proposal has many merits including providing greater flexibility to municipalities who could prioritize funding amongst different types of programs depending on local needs and demands. It will improve the consistency between programs leading to a better and more efficient provision of services. AMO is also pleased that in this case the Ministry has recognized the benefits of greater municipal empowerment and

flexibility in making decisions on the best way to allocate resources in support of the existing housing stock.

In sum, AMO has advocated and municipalities have begun to take on a more active role in developing comprehensive housing policies for local communities. And in some cases the Province has recognized the benefits of supporting and encouraging this role. However, with this proposed legislative action the Province is both negating municipal efforts to plan for and develop housing intensification policies appropriate to their communities and reducing the municipal authority to implement these policies.

2.4 Planning Implications

Servicing

Municipalities are also concerned about the impacts of accessory units on existing hard and soft services. Servicing capacities are based on the design density of residential developments. When residential areas are zoned or rezoned, planning studies are conducted to ensure that adequate servicing is available or can be provided. These studies are conducted prior to development or rezoning.

Servicing concerns include sewer and water capacities, and the ability to accommodate increased parking and traffic demands. For rural areas it includes the environmental impact of additional units on residential lots currently serviced by wells and/or septic systems. For soft services it includes uncertainty as to whether increased demands on schools and recreation facilities (some of which are currently at or over capacity) can be accommodated.

Therefore this legislation not only overrides current zoning but also excludes "planning" to ensure that the necessary services are available to accommodate the residential densities permitted.

Inequities result from allowing growth as-of-right on a broad basis without clarifying whether this growth should be financed out of general municipal revenues or from development charges. Whether the net growth-related capital costs of intensification are leviable or not remains an issue which to date has not been addressed.

Implications of Terminology: Apartments in Houses or Accessory Apartments?

The proposed regulations state that municipalities may not regulate the size of either of the two permitted units in a house. Two units of any size are therefore possible subject only to the lot coverage and yard requirements of the specific zone. This is more like "duplexing" and effectively eliminates the notion that the apartment would be subsidiary to the principal residence. This means that two units of equal size could be created and offered as rental apartments. By taking away the "accessoriness" of apartments, the proposed legislation will lead to "apartments instead of houses" rather than "apartments in houses."

Condominium Townhouses

The definition of residential units includes rowhouses/townhouses. Legal complications could arise with regards to condominium corporation by-laws which may prohibit accessory apartments and/or may include declarations that base condominium fees and parking privileges on unit occupancy.

2.5 AMO's Position on "An Apartment in a House" Draft Legislation

In sum, AMO opposes this legislation for the following reasons:

- The Province should not resort to this legislative approach for achieving its housing objectives through the land use planning system. The Sewell Commission should continue to be the forum for recommending the appropriate means for the Province to express its goals and objectives for the land use planning system. Through its submissions to the Sewell Commission, AMO supports that the Province's role should be confined to setting goals and objectives for planning and municipalities should identify policies for implementing them.

- It is contrary to the accepted practice of policy statements as the means for expressing provincial interest and is contrary to the current requirements of the housing policy statement.

- This is an unwarranted interference with municipal zoning authority. Municipalities will be held responsible and accountable for policy

decisions made by the Province which have not been subject to public consultation and appeal.

- AMO has advocated and municipalities have begun to take on a more active role in developing comprehensive housing policies for local communities. This proposed legislative action will both negate municipal efforts to plan for and develop housing intensification policies appropriate to their communities and will reduce the municipal authority to implement these policies.

- The legislation excludes "planning" to ensure that the necessary services are available to accommodate the residential densities permitted.

Based on the above fundamental issues AMO is strongly opposed to the draft legislation to permit "an apartment in a house" and calls on the Province not to proceed with the introduction of legislation.

Recommendation 1

AMO strongly opposes the draft legislation to permit "an apartment in a house" as-of-right and calls on the Province to withdraw its proposed legislation.

3 Other Legislative Issues Addressed in the Consultation Paper

There are two other legislative changes introduced in the consultation paper: changes regarding garden suites and unrelated persons forming single housekeeping units.

3.1 Garden Suites

Originally called "granny flats", garden suites are a special class of accessory units. They are separate, self-contained units that are typically located in the side or rear yards of an existing house. They usually house an

elderly or disabled person who wants an independent living area but also needs the support of family or friends living in the main house.

The Province is proposing regulatory changes to provide a better framework for those municipalities wishing to consider this option. Municipalities are not being required to permit this type of housing if they choose not to.

In AMO's response to the consultation paper, *A Housing Framework for Ontario*, the Association supported granny flats as a form of housing intensification subject to the resolution of regulatory issues. Regulatory issues which have arisen from this type of unit include how to assure their temporariness. Furthermore, some have argued that the process of renewing temporary use by-laws (currently a three-year limitation) is lengthy and costly, causes uncertainty, and may discourage the provision of these units.

AMO recommended the following amendments to address two main concerns: ensurance that units would be removed at the end of their intended use; and change to the current limitation period of temporary use by-laws.

The consultation paper proposes amending the *Planning Act* to allow municipalities to pass a by-law to permit the placement of a garden suite for up to 10 years. Such a by-law, like any other temporary use by-law, would be applied to a specific area or site. The *Municipal Act* would be amended to allow municipalities to enter into garden suite agreements to require people who want garden suites to meet reasonable terms and conditions relating to issues such as installation, maintenance or removal, and the period of occupancy.

AMO supports these legislative amendments subject to the some additional clarifications noted in its recommendation.

Recommendation 2

AMO recommends that the proposed amendments pertaining to garden suites be subject to the following clarifications:

- **that the terms and conditions of the agreements include restricting the occupancy of garden suites to elderly or disabled relatives of the homeowner; and**
- **that express provision be made that municipalities continue to have the authority to regulate the type of construction, size, height or bulk of these suites (i.e an enabling statement in the Planning Act allowing municipalities to apply site plan control to garden suites).**

3.2 Unrelated Persons Forming a Single Housekeeping Unit

The Province intends to amend the *Planning Act* to make it clearer that zoning distinctions based on the relationships between people who form a single housekeeping unit (not defined) are not permitted. The changes would involve repealing section 35, and the inclusion of provisions addressing the related/unrelated issue in section 31 and 34, and in the new section 35.

In 1989 the Province enacted Section 34a under the *Planning Act, 1983* (Bill 128) which declared provisions in municipal zoning and interim control by-laws distinguishing between related and unrelated persons in respect to the occupancy of a building to be of no force or effect.

At first it may appear that the inclusion in the consultation paper of this issue is an anomaly. However, it is consistent with one of the reasons AMO believes the Province has for pursuing these legislative amendments. While this is an issue more to do with lodging and rooming house, it arises in response again to the Ministry's assertion that municipalities are not appropriately implementing the provisions related to housing intensification as set out in the housing policy statement.

In its report, *The Implementation of the Land Use Planning for Housing Policy Statement*, AMO reasserted its concerns and position on the issue of distinguishing between related and unrelated persons. AMO has expressed strong support for the municipal authority to restrict the numbers of unrelated occupants which reside in one dwelling unit. In the past, use of the definition of "family" within municipal by-laws was the means of such regulation. AMO has disagreed with the argument that to regulate on the basis of related or unrelated occupants is a form of discrimination. AMO has argued that various OMB and court cases have determined that the provisions of the *Planning Act, 1983* under sections 34 and 37 are not discriminatory.

AMO continues to believe that Section 34a of the *Planning Act, 1983* (Bill 128) should be repealed, thereby restoring the municipal authority to restrict the numbers of unrelated occupants which reside in one dwelling unit. If Section 34a is not repealed, then AMO believes there is sufficient evidence warranting the legal testing of the section (i.e. refer it to the Court of Appeal) to determine whether the regulation of occupancy on the basis of relationship is discriminatory (ie. contravenes the Charter of Rights and Freedoms).

The Province has not responded to this position and as a result many municipalities have been looking for alternative ways to restrict the numbers of unrelated occupants which reside in one dwelling unit. AMO supports these efforts and believes that zoning tools which limit the number of unrelated occupants of a building are legitimate planning tools.

The first municipal by-law to be contested for its effort to limit the number of unrelated occupants in a dwelling unit was the City of Guelph's lodging house by-law. In January 1992 the Ontario Municipal Board delivered its decision in the matter of the Ministries of Housing and Municipal Affairs appeal against the City's by-law.[2] The OMB ruled in favour of the City; its decision is significant because it is the first lodging house by-law to be passed by any municipality since the housing policy statement was approved and the definition sections under consideration could be a precedent for lodging house by-laws in other municipalities in the future. It is also the first lodging house by-law to be approved since the enactment of Section 34a of the *Planning Act*.

The Board's decision included the following significant observations and arguments:

- The Ministries' definition of a lodging house included the words "which functions as a single housekeeping unit." The Board argued that these words are vague and that it would be very difficult to prove in court whether a household was or was not functioning as a single housekeeping unit.

- The Board noted in its decision that there was an undercurrent that ran through the hearing and in particular by counsel for the appellant Ministries and their witnesses. The concern hinted from time to time was that somehow the by-law was contrary to Section 34a of the *Planning Act* or in violation of the Canadian Charter of Rights and Freedoms. While no credible evidence was given to support the concern and the matter was not argued before the Board, it was nevertheless present throughout the hearing and for that reason the Board mentioned it in its decision.

- The Board stated that "if it is in fact a group of people living together, regardless of whether they are related to each other or not, but living together and paying rent in some way for their accommodation, then it is a lodging house and it ought to be regulated as such. ..... Exhibit Number 28 [the Ministries' proposed lodging house definition] is really nothing more than a device to avoid regulation in some circumstances that ought to be caught [i.e. regulated]."

- "The Board believes there is a difference between the usual detached home of 3.1 or less persons per household and a lodging house as permitted by the By-Law. ..... Limiting the density by use of a minimum distance separation formula, and a limit on the number of occupants of a building, are perfectly legitimate planning tools, and in our view, desirable planning tools when the built form of all the residential stock looks like low density housing and will remain so."

AMO is very concerned that the Province is resorting to this legislative action in response to its unsuccessful appeal to the OMB. In many ways this

action is similar to that taken by the Province with respect to Bill 128 which was also enacted in response to OMB hearings which at that time upheld municipal by-laws which made zoning distinctions based on the relationship of occupants of a residential unit. Now the Province is again reacting to a Board ruling it doesn't agree with by introducing legislation to prevent municipalities from limiting the number of unrelated occupants of a residential unit.

This raises serious questions about the legitimacy of OMB hearings and decisions.

Recommendation 3

AMO strongly opposes the proposed legislative amendments concerning unrelated persons. The Guelph decision should prevail and AMO reasserts its position that the Province should repeal Section 34a of the *Planning Act* or refer it to the Court of Appeal.

4 OTHER OPTIONS FOR SUPPORTING MUNICIPAL HOUSING INTENSIFICATION POLICIES

In its report, *The Implementation of the Land Use Planning for Housing Policy Statement*, AMO proposed that if the Province wants to ensure greater acceptance of housing intensification, then it should look at providing municipalities with the legislative supports to enable them to ensure that the housing provided is safe, properly operated and maintained; and that the necessary services to support these units are available or can be provided and financed. Many municipalities have taken the approach that they will implement as-of-right zoning if the Province provides the necessary legislative authority for municipal regulation of the various forms of housing intensification. This proposal is elaborated on below.

4.1 Implement Regulatory, Enforcement and Financial Measures

Regulatory and enforcement issues have come forward in response to concerns about unsatisfactory housing conditions which could lead to substandard housing. Also, part of the exercise of developing housing intensification policies involves trying to increase neighbourhood acceptance of these housing forms. In many cases, community acceptance would be increased if there were improvements in regulations and the enforcement of municipal by-laws.

In addressing these regulatory and enforcement issues, AMO called on the Province to make a commitment to a process for the resolution of housing intensification issues. AMO has argued that municipalities need assistance in achieving enforcement objectives through either regulation or licensing authorities.

Right of Entry

In its report AMO called on the Province to amend the *Planning Act* to provide municipal inspectors increased powers of entry to ensure compliance with municipal zoning and property standards by-laws. This recommendation was made in response to the limited ability of municipalities to enforce zoning and property standards by-laws due to inadequate right-of-entry powers. For example, if municipal inspectors suspect that a building has been converted in contravention of municipal standards, they are often unable to gain entry into the residence in order to prove the violation. If denied entry, they are required under the *Planning Act* to obtain a search warrant, specifying the evidence to be seized. If the violation relates to the building's physical condition it is not usually possible to identify the type of evidence to be seized, if any.

Recommendation 4

AMO supports the proposed amendment to sections 31 and 49 of the *Planning Act* to allow the issuance of search warrants, without requiring that evidence be seized, or even specified.

The remainder of this section presents the arguments and recommendations contained in AMO's report, *The Implementation of the Land Use Planning for Housing Policy Statement*. A list of the recommendations is contained in Appendix 'A'. To date, the Province has not formally responded to these recommendations.

Financial

The financial implications of accessory units was recently illustrated in a position paper prepared by the Region of Peel Consultation Committee on Accessory Apartments and Rooming, Boarding, and Lodging Houses.[3] The paper notes that there are limited ways for municipalities to generate revenue from new accessory apartments. Under the *Assessment Act* a dwelling with an identifiable accessory unit generates the same tax assessment as a dwelling with a finished, and unrented, basement. The assessment is based on the value of the building only, not on the potential to generate income. A general guideline is that if the accessory unit increases the market value of the property by $5000.00 or more the assessed value of the property increases. However, the market value of many of these properties does not increase by $5000.00 and therefore municipalities are unable to obtain additional revenue. This is due in part to the base years used to assess properties.

As an example, the report illustrates that for an assessed value increase of $2970.00 (market value exceeds $5000.00) results in $45.68 of additional revenue per annum. Therefore, even when revenue can be generated for an accessory apartment, it is minimal.

The *Development Charges Act* does not recognize accessory apartments as development. The City of Mississauga estimates a loss of development charge and tax revenues of ten million dollars if an additional 2300 accessory units were to be built. Similarly the Region of Peel has estimated a loss of development charge and tax revenues of over 5.7 million if 2000 additional accessory units were to be built.

The position paper also suggests that one option would be to assess accessory units in a way similar to a duplex. Under the *Assessment Act* duplexes are assessed as separate units; in most cases duplexes generate more income than accessory apartments.

In its report on the housing policy statement, AMO also made the recommendation that accessory units be assessed for residential property taxes as separate units. Regardless of the appropriate mechanism for assessment (e.g. by assessing as duplexes or some other way), AMO's principle was that under the *Assessment Act* a dwelling with an identifiable accessory unit should generate more tax assessment than a dwelling with a finished, and unrented, basement. The appropriate means of assessment to achieve this should be determined.

Licensing Accessory Units and Owner Occupancy Controls

Some municipalities have expressed concern with property maintenance standards in absentee-owner properties. In its report, AMO suggested that municipalities be permitted to pass by-laws licensing and regulating accessory units. This was based on the argument that absentee-owned rented-out houses merit additional controls because they generate a grossly disproportionate number of complaints and problems for municipal by-law officers. It was not intended to prohibit absentee-owned units; owner occupancy units would be freed of most controls while absentee-owned ones would be more strictly controlled through licensing to achieve regulatory objectives such as property maintenance.

Court Procedures

Property standards by-laws attempt to address some of the problems associated with poor property maintenance. However, AMO noted in its report that cases are slow to get to court, often fines or other costs cannot be collected, or enforcement of prohibition orders requires extensive work and effort to take the case through the courts. AMO therefore proposed enforcement changes to achieve a more expeditious and cost-effective process for dealing with these issues.

Anyone contravening a municipal by-law is liable to a conviction; where a conviction is entered, an order may be made to prohibit the continuation or repetition of the offence by the persons convicted. Currently, a provincial judge is the issuing judge of a prohibition order. To enforce such an order, an application must be made to a higher court, despite the fact that the order was issued by the provincial court. This results in additional time and costs and make the enforcement of the prohibition order impractical.

Therefore, it is recommended that court procedures be amended to permit a Prohibition Order to be enforced by the Court granting such an order. This would enable the issuing court to implement and carry through the order and effectively represents the streamlining of enforcement.

Another cost-effective and expeditious way of dealing with by-law infractions could be the establishment of a Municipal By-Law Court. In making its recommendation, AMO believed there is a need to develop a judicial body with the expertise in issues related to municipal by-laws and enforcement.

Expediting court procedures could address both by-law enforcement issues and legitimate homeowner/landlord concerns with regards to tenants. Statutory delays coupled with dilatory court procedures can slow down the process intolerably preventing this as a reasonable avenue for landlords.

AMO's Proposal and Province's Response

These and other measures could be addressed towards advancing the objectives of housing intensification. The difference between the Province's proposed legislation and AMO's proposal is fundamental. AMO prepared its report on the *Implementation of the Land Use Planning for Housing Policy Statement* with the belief that municipalities and the Provincial Government would be better served by a cooperative approach for resolving issues related to the implementation of the policy statement. AMO believed that from both the provincial and municipal points of view, the implementation of the statement was not proceeding effectively, its goals were not being achieved and therefore there was a need to address municipal and provincial concerns in a comprehensive and cooperative manner.

The Province has not responded to AMO's invitation to address these issues and despite initial commitments to formally respond to AMO's report, no provincial review or report has been received. The Government states that the policy statement continues to be a priority yet at the same time it has not worked with the municipalities, the level of government responsible for implementing the provisions of the statement, to resolve issues and concerns. Instead, the Province has responded with this legislative action.

5 CONCLUSIONS

AMO's response focuses on questioning the fundamental basis of the Province's policy decision. The Association believes that the Province should not resort to this legislative approach for achieving its housing objectives through the land use planning system and that the Sewell Commission should continue to be the forum for recommending the appropriate means for the Province to express its goals and objectives for the land use planning system; the action is contrary to the accepted practice of policy statements as the means for expressing provincial interest and is contrary to the current requirements of the housing policy statement; it is an unwarranted interference with municipal zoning authority; the proposed legislative action will both negate municipal efforts to plan for and develop housing intensification policies appropriate to their communities and will reduce the municipal authority to implement these policies; and the legislation excludes "planning" to ensure that the necessary services are available to accommodate the residential densities permitted.

Based on these arguments, AMO is strongly opposed to the Province's draft legislation to permit "an apartment in a house" and calls on the Province not to proceed with the introduction of legislation.

6 SUMMARY OF RECOMMENDATIONS

Recommendation 1

AMO strongly opposes the draft legislation to permit "an apartment in a house" as-of-right and calls on the Province to withdraw its proposed legislation.

Recommendation 2

AMO recommends that the proposed amendments pertaining to garden suites be subject to the following clarifications:

- **that the terms and conditions of the agreements include restricting the occupancy of garden suites to elderly or disabled relatives of the homeowner; and**
- **that express provision be made that municipalities continue to have the authority to regulate the type of construction, size, height or bulk of these suites (i.e an enabling statement in the Planning Act allowing municipalities to apply site plan control to garden suites).**

Recommendation 3

AMO strongly opposes the proposed legislative amendments concerning unrelated persons. The Guelph decision should prevail and AMO reasserts its position that the Province should repeal Section 34a of the *Planning Act* or refer it to the Court of Appeal.

Recommendation 4

AMO supports the proposed amendment to sections 31 and 49 of the *Planning Act* to allow the issuance of search warrants, without requiring that evidence be seized, or even specified.

ENDNOTES

1. Region of Peel Consultation Committee, *Position Paper: Accessory Apartments and Rooming, Boarding and Lodging Houses*, June 1992 (unpublished; not Council-endorsed).

2. Ontario Municipal Board, R 9000436, Decision delivered by A.J.L. Chapman, January 22, 1992.

3. Region of Peel Consultation Committee, *Position Paper.*

APPENDIX A - PREVIOUS AMO HOUSING INTENSIFICATION RECOMMENDATIONS

The following recommendations were contained in AMO's report, *Implementation of the Land Use Planning for Housing Policy Statement: Issues and Recommendations* (Report 91-19).

Recommendation 15	AMO recommends a housing intensification policy which requires that municipalities designate areas within their official plans where each form of Residential Intensification will be permitted. These uses should be permitted in areas which meet the stated provincial criteria and locally determined criteria for as-of-right conversions.
Recommendation 16	The *Planning Act* should be amended to provide municipal inspectors powers of entry to ensure compliance with municipal zoning and property standards by-laws as is provided under the proposed amendments to the Building Code (Bill 112).
Recommendation 17	AMO recommends the amendment of Court Procedures to permit a Prohibition Order to be enforced by the Court granting such an order.
Recommendation 18	AMO recommends that legislation be enacted to permit the creation of Municipal By-Law Courts to deal with all by-law infractions and Building Code violations.
Recommendation 19	AMO recommends that the *Municipal Act* be amended to permit municipalities to pass by-laws for licensing and regulating accessory units.
Recommendation 20	AMO recommends amending Sections 38 (Temporary Use By-Laws) and 44 (Minor Variances) of the *Planning Act* to permit municipalities to enter into agreements with owners as a condition of permission granted under the authority of those Sections, and to provide that these agreements are able to be registered against the land to which they apply and enforceable against any and all subsequent owners of the land.
Recommendation 21	AMO recommends that the Province introduce landlord and tenant legislation that recognizes the unique characteristics of owner-occupancy in order to provide a further incentive for homeowners to provide accessory units.

Recommendation 22	AMO recommends that accessory units be assessed for residential property taxes as separate units, in a similar way in which duplexes are assessed under the *Assessment Act*.
Recommendation 23	AMO recommends that the Provincial Government either repeal Section 34a of the *Planning Act, 1983* (Bill 128) or refer Section 34a to the Court of Appeal.
Recommendation 24	AMO recommends that the Provincial Government work in cooperation with AMO and municipalities to resolve issues related to the licensing and regulation of rooming, boarding and lodging houses, and student housing.

APPENDIX B - ACKNOWLEDGMENTS

The Association of Municipalities of Ontario would like to thank the following members of its Housing Task Force who volunteered their time to help produce this response.

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